ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

888 17th Street, NW • Suite 900 • Washington D.C. 20006 • Telephone: 202 969 ALTS • Fax: 202 969 ALT1 • www.alts.org

August 6, 2001

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW- TW – A235
Washington, DC 20554

Re: CC Docket No. 01-138 – Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania

Dear Ms. Salas:

Attached are the Associations for Local Telecommunications Services Reply comments in response to the Commission's Public Notice (DA 01-1486) in the above-captioned proceeding.

Sincerely,

/s/

Kimberly M. Kirby
Association for Local Telecommunications Services

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Application by Verizon Pennsylvania Inc.,	)	
Verizon Long Distance, Verizon Enterprise	)	**CC Docket No. 01-138**
Solutions, Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for Authorization	)	
To Provide In-Region, InterLATA Services	)	
In Pennsylvania	)	

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association For Local Telecommunications Services ("ALTS") submits these reply comments in response to the FCC's Public Notice ("Public Notice") DA 001-1486 in the above-captioned proceeding inviting comments from interested parties on the application by Verizon Pennsylvania Inc. et al ("Verizon")

ALTS urges the Commission to deny Verizon's application outright rather than pick one or two issues that need a "fix" and encourage the Bell Operating Company to "re-file" on isolated issues. ALTS believes, *inter alia*, that Verizon's Application must be rejected based on Verizon's recent policy decision to refuse to provide CLECs with UNE loops (DS1s or T1s) based solely on what Verizon calls "no facilities, none planned."

Once again Verizon refuses to comply with Commission orders, blatantly denies CLECs the ability to compete throughout the Verizon region, including Pennsylvania, yet boasts compliance in with Section 271 of the Telecommunications Act. The

Commission must, based on the evidence in this proceeding, deny Verizon's application for in-region long distance relief and sanction Verizon for its blatant non-compliance with the law.

I. VERIZON REFUSES TO PROVIDE UNE LOOPS WHERE NO FACILITIES EXIST

Prior to Filing its Application for Section 271 in-region long distance relief ("Application") Verizon consistently had been provisioning UNE loops at the DS1 (or T1) level for competitors. CLEC deployment of these loops was in no way on equal footing with Verizon facilities and market share but at least Verizon had been, for the most part, converting the circuits pursuant to the law. By the time CLECs filed initial comments in this proceeding, Verizon had changed its mind and stopped providing DS1 loops "where no facilities existed." Instead, Verizon informed its CLECs customers that they could order out of the special access tariffs and that the UNE rate would not be available.

Verizon is in clear violation of the Commission's *Local Competition First Report and Order*, the *First Advanced Services Order*, and the *UNE Remand Order*. Verizon's reasoning, and blatant anti-competitive position, is illogical, contrary to Commission orders, and causes serious economic hardship on several CLECs throughout the Verizon region, including Pennsylvania. Moreover, Verizon is installing the same circuits for its retail customers that it denied as a wholesale circuit to the CLEC. The practice also appears to affect POTS lines.[1] Verizon has even been able to manipulate the

[1] ***Cavalier Telephone*** reports that since 1999 it has placed hundreds of UNE DS1 loops with Verizon and Verizon has successfully provisioned more than 400 of these UNE loops for Cavalier in Virginia,

provisioning metrics by claiming that "no facilities exist." In Pennsylvania, Verizon is permitted to exclude so-called "facilities misses" – orders that were not provisioned because Verizon claimed that facilities were not available – from the performance metrics data. However, according to Covad, as filed in Covad's initial comments in this proceeding, Verizon has not been able to explain what a "no facilities" response means and yet has been able to skew the performance data to favor Verizon.[2]

This is a very serious problem that must be resolved immediately either by the Commission's own action outside of this proceeding, or by denying Verizon's Application and refusing to allow Verizon to convert any more long distance customers in any state until the "no facilities" response issue is resolved by clear and convincing evidence.

A. Commission Orders Require Verizon to Provision UNE DS1 Loops

The Commission issued the *First Local Competition Report and Order* on August 8, 1996. In that Order, the Commission clarified the unbundling provisions of Section 251 (c)(3) of the Telecommunications Act, defining a DS1-capable loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central

---

Maryland, and Pennsylvania where the customer did not currently have DS1 service. Beginning in June, Verizon abruptly changed its position and refused to process Cavalier's DS1 UNE loop orders where the service was not already in place. The pending orders are placed in "limbo" subject to Verizon's cancelling the order within 30 days. ***Madison River*** reports that, as early as July, Verizon's solution was for the CLEC to order special access and then convert the circuits to UNEs after a month's billing. Verizon would then charge a $900 NRC for ordering the special access circuit, charge the special access monthly rate which is double the UNE rate, and then charge an additional $300 NRC to convert the UNE circuit. ***FairPoint*** reports that in early July it tried to order 5 new installs for POTS lines. Three loops were installed and 2 were not due to "service denied – no facilities" confirming that Verizon will only provide UNE loops (apparently including POTS) only if facilities exist. Verizon will not write an engineering job to provide the service. ***NWP*** reports that it tried to order a loop multiple times at 204 Elizabeth Street (NY). It was denies due to "no facilities." Subsequently the customer at 204 Elizabeth Street ordered a retail circuit through Verizon and it was installed.

[2] See *Comments of Covad Communications Company*, CC Docket No. 01-138, at p. 11. Covad has asked Verizon repeatedly to explain why Covad is subject to facilities misses and Verizon has refused to provide such critical information.

office, and the network interface device at the customer premises. This includes two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[3] The Commission adopted the same conclusion in the *UNE Remand Order*.[4]

The Commission went on to clarify that ILECs must take affirmative steps to condition loops to carry digital signals. The Commission stated that "[its] definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities.[5]

For example, if a competitor seeks to provide a digital loop functionality, such a ADSL, and the loop is currently not conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus [we] reject BellSouth's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3)."[6]

The Commission is clear on its interpretation of the ILEC unbundling requirements. In fact, the Commission re-enforced its position in the *First Advanced*

---

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15509, para 380 (*Local Competition First Report and Order).*
[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order,* 15 F.C.C. Rec. 3696, para. 191 (2000) (*UNE Remand Order).*
[5] *Id.* at para*. 382*
[6] *Id.*

Services Order that ILECs must take affirmative steps to condition UNE loops for requesting carriers. In addition, ILECs are required to condition any loops to provide service, including DS1s, even where the ILEC is not providing such service over its facilities.[7]

The Commission stated *again* in the *UNE Remand Order* that ILECs must "provide conditioned loops, wherever a competitor requests, even if the incumbent is not itself offering [the service] to the end-user customer on that loop."[8] Further, the Commission recognized that requiring LECs to condition the loops will, in some instances, "require the incumbent LEC to take affirmative steps to enable requesting carriers to provide services that the incumbent does not currently provide."[9] Thus Verizon's obligation to provide UNE loops is clear. In fact, until recently, Verizon had been providing UNE loops at the DS1 level pursuant to the FCC Orders.

For years, Verizon has provided these facilities as a retail DS1 access service and Verizon seeks to force CLECs into this economically untenable position today. In fact, Verizon's July 24, 2001 letter denying the request for DS1 loops "where no facilities are available" confirms that wholesale customers may order DS1s through Verizon's retail tariffs.[10] Thus Verizon admits that it is technically feasible to offer this service in compliance with the Commission's rules, but tries to convince the Commission that the

---

[7] "To the extent technically feasible, incumbent LECs muct take affirmative action to condition exiting loop facilities to enable requesting carriers to provide services not currently provided over such facilities…[t]he incumbent may not deny such a request on the ground that it doe not itself offer advanced services over the loop, or that other advanced services that the competitive LEC does not intend to offer could be provided over the loop." *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket N. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking,* 14 FCC Rcd 4761 (1998) (*Advanced Services First Report and Order)* at para 53.
[8] *UNE Remand Order* at para. 191.
[9] *Id.*
[10] See Verizon Policy Letter on "DS1 and DS3 Unbundled Network Elements Policy" at http://128.11.40.241/east/wholesale/resources/master.htm.

mere fact that Verizon makes more money from a retail service is sufficient reason to refuse to comply with its legal obligations.

Instead, Verizon chooses to operate outside the confines of the law. This is unacceptable and ALTS urges the Commission to take swift action first by requiring Verizon to stop its illegal and anti-competitive practices, and second, by denying the Application outright. Verizon is also making a bold stand against TELRIC. However, rather than change its rates to reflect higher costs, which is on its face illegal, Verizon simply makes the UNE rate unavailable and forces the CLECs to buy out of its access tariffs. One could argue that the "no facilities" argument is merely the same as changing its rates to reflect the non-UNE rate.

We understand that Verizon may raise arguments in its reply that are not yet part of the record. To assure the record is complete, we will anticipate two of these claims here. First, Verizon may assert that the electronics and engineering associated with special access is more expensive than those associated with UNE EELs. Such an argument would be a confession, not a defense.

The Commission long ago ruled that "…the access and unbundled network elements provided by an incumbent LEC must be *at least equal in quality* to that which the incumbent provides to itself."[11] Any unilateral decision by Verizon now to degrade the quality of EELs in comparison with special access is a naked violation of the Act, as well as the antitrust laws, should be punished immediately.

Second, Verizon may claim that the TELRIC rates established for EELs in its service territories, including Pennsylvania, do not properly capture the cost of provisioning special access. This claim rests upon two mistakes. At the outset, it makes the erroneous assumption, discussed above, that the incumbent is entitled to impair the quality of EELs in comparison with special access. This error is then compounded by Verizon's conclusion that any TELRIC costing mistakes by state PSCs concerning EELs (errors that Verizon appears to have created by concealing until now its theory that EELs are a "poor man's version of special access) somehow entitle Verizon to take unilateral action concerning the availability of special access functionality at TELRIC rates. If Verizon had any complaint about the states' TELRIC determinations for EELs, its remedy was to take those determinations to Federal court, and not take the law into its own hands.

Surely ALTS is not the only entity that sees the absurdity of this blatant disregard for Commission authority. And yet this is just another step in many that Verizon has taken to change the rules where it does not agree with the law. Just recently ALTS filed comments on Verizon's move to side-step certain merger conditions; last week, ALTS, along with other CLECs, filed against Verizon's attempt to increase DC power through its federal tariffs. And yet, all the while Verizon claims that its region is the most conducive to local competition. Regardless of the step Verizon has taken to gain long distance authority in New York and Massachusetts, it is clear that (1) Verizon is not ready in Pennsylvania and (2) the Commission must closely monitor Verizon's activities on every competitive issue.

B. Department of Justice Evaluation Does Not Take Into Account Verizon's Recent Policy Change on DS1 UNEs

The Department of Justice (DOJ) filed its evaluation on July 26, 2001. The information upon which the DOJ based its evaluation was filed prior to Verizon's recent

---

[11] *Local Competition First Report and Order* at para. 312, emphasis added.

policy decision to force CLECs to buy "UNEs" from the access tariff. Interestingly, though, the DOJ noted in its evaluation that the Pennsylvania Performance Assurance Plan (PAP), that the PAP is unable to "detect widespread discrimination, because it evaluates discrimination for most metrics only on a CLEC-specific basis. Thus, the current PAP may not provide the necessary incentives to keep Verizon from backsliding in ways that would most harm competition in Pennsylvania."[12] Not only did the DOJ not have the benefit of Verizon's "new" policy on UNEs, apparently the DOJ also foreshadowed a problem that has already come to light in Pennsylvania with respect to the deficiencies of the PAP.

As stated above, in Pennsylvania, Verizon is permitted to exclude so-called "facilities misses" – orders that were not provisioned because Verizon claimed that facilities were not available – from the performance metrics data. Since Verizon is allowed to "hide" this essential data, it is therefore difficult for the state commission or this Commission to determine such issues as "no facilities," including the extent to which this issue affects competitors.

Moreover, Verizon refuses to explain its policy on "facilities missed" and/or "no facilities" and there appears to be no way for the regulators to compel such information. It is also important to note that the DOJ Evaluation seemed to focus solely on the billing issues and PAP, and only referred to statistical evidence on the number of CLEC versus Verizon facilities. There was little evidence on the record of the "no facilities" issue because Verizon chose yet another sneak attack by implementing its anti-competitive

[12] See Evaluation of the Department of Justice, *In re: Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, FCC Docket No. 01-138 (July 26, 2001) at p. 16 (*DOJ Eval.).*

policy decision *after* filing its section 271 application thus purposefully shielding the regulators from the issue.

For this reason alone, ALTS urges the Commission to deny the Verizon Application outright and allow the parties, the regulators, and the DOJ time to decipher the competitive impact of Verizon's "no facilities" policy. The DOJ comments that "Verizon has made significant progress toward opening its local markets in Pennsylvania to competition [and that] [l]ocal markets in Pennsylvania show a substantial amount of competitive entry" are negated by Verizon's "about face" on the UNE DS1 issue.[13]

II. VERIZON BILLS ARE INACCURATE

In addition to the very serious, and economically damaging effect of the "no facilities" issue, Verizon continues to thwart competitive entry by failing to take steps necessary to render accurate bills. In fact, two Pennsylvania Commissioners dissented in the state Section 271 case citing inaccurate billing as the primary reason of Verizon's failure to comply with the competitive checklist in Section 271.[14] ALTS agrees with the Commenters in this proceeding that failure to reconcile the billing system is a customer affecting, and industry-impacting problem. One that cannot be fixed over-night and surely one that the Commission must monitor before any Section 272 relief can be granted.

---

[13] *Id.* at p. 2.

[14] See *Consultative Report on Application of Verizon Pennsylvania, Inc for FCC Authorization to Provide In-Region Inter-LATA Service in Pennsylvania,* PA Docket No. M-00001435, Dissenting Statement of Commissioner Nora Mead Brownell (rel. June 6, 2001) ("regarding electronic billing – Verizon must implement adjustments to its electronic billing system to insure that CLECs are able to obtain timely and accurate bills"). See also *Consultative Report on Application of Verizon Pennsylvania, Inc for FCC Authorization to Provide In-Region Inter-LATA Service in Pennsylvania,* PA Docket No. M-00001435, Dissenting Statement of Commissioner Terrance J. Fitzpatrick Concurring in Part and Dissenting in Part (rel. June 6, 2001) ("Because of the lack of timely and accurate electronic bills, I find that Verizon has not satisfied checklist item no.2).

The DOJ Evaluation focused specifically on the billing issue. Given the poor performance on this most critical issue, the DOJ does not support approving Verizon's application – and for good reason. The DOJ notes in its Evaluation that "[a]ccurate and auditable electronic bills are an important factor in making local telecommunications markets fully and irreversibly open to competition. Indeed, CLECs have indicated that the lack of auditable and accurate electronic bills in Pennsylvania is a serious competitive issue. Without functional electronic bills, CLECs have no practical way to determine whether Verizon is charging them correctly for services they have ordered."[15] One CLEC reports that Verizon bills are so grossly inadequate that the CLEC cannot reconcile the quantity of loops installed and removed. Duplicate bills have been found both in Verizon's "Legacy" system and "Express Trac" system. Recurring and non-recurring charges for loops cannot be verified and the bills are inaccurate because Verizon bills reflect incorrect zone density cells.

Further, billing metrics reported by Verizon do not appear to capture all of the billing problems identified by CLECs.[16] It is therefore unlikely that the metrics necessary would constitute a fully effective means of ensuring that the electronic billing problems are resolved.[17] The DOJ further notes that the billing accuracy metrics, which until July 2001 addressed only Verizon's paper billing performance, have not reflected the CLECs' actual commercial experience with billing, as they do not appear to measure properly the adjustments made by Verizon to resolve billing accuracy disputes."[18]

---

[15] DOJ Eval. at p. 11.
[16] DOJ Eval. at p. 13
[17] *Id.*
[18] *Id.*

Without proper billing mechanisms in place today, Verizon cannot possibly meet the checklist standard for section 271 approval. Moreover, promises to implement a "fix" sometime after approval is not a proper, or legal, solution.

III. VERIZON'S GOAL IS TO GAIN LD CUSTOMERS, NOT OPEN ITS MARKETS TO COMPETITION

Evidence provided by Verizon Chairman and co-CEO, Charles R. Lee, proves that Verizon is a telecommunications industry leader in both the voice and data markets.[19] In Mr. Lee's presentation entitled "The Communications Food Chain" Verizon has seen a twenty-seven percent (27%) growth in its data revenues from $1.333 million in 1Q 2000 to $1.701 million in 1Q 2001.[20] Verizon DSL subscribers have grown from 150,000 in March 2000, to 720,000 in March 2001. Mr. Lee's "target" goal for DSL subscribers is 1.2 to 1.3 million by the end of 2001.[21] And that's not all.

Verizon has targeted to obtain "LD Approval" for 85% of its access lines by the end of 2001.[22] At the same time that Verizon boasts about its healthy coffers, Verizon is also stealthily pushing competitors out of the market as evidenced by this latest tactic of claiming "no facilities" and compelling requesting carriers to buy out of the access tariff. It is also clear that Verizon's goal, as evidenced by Mr. Lee's recent report, is to parlay its control over the local market into long distance. This is why Verizon is filing for section 271 approval – not because it has opened its markets to competition but, rather, because Verizon has a business goal of gaining long distance approval for 85% of its access lines by the end of this year.

---

[19] *See* Presentation by Chairman and co-CEO Charles R. Lee presented at the CIBC World Markets Annual Investor Conference June 11, 2001 at http://investor.verizon.com (*Verizon Presentation*).

[20] *Id.* at slide no.22.

[21] *Id.* at slide no.17.

[22] *Id.* at slide no 20.

CONCLUSION

For the reasons stated above, ALTS respectfully urges the Commission to deny Verizon's Application for authority to provide in-region interLATA services in Pennsylvania.

Respectfully submitted,

/s/

Kimberly M. Kirby
Jonathan Askin
Association for Local Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 969-2587
kkirby@alts.org
jaskin@alts.org

August 6, 2001